

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN JOSE SALAZAR-TORRIJOS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

Case No.: 13-CR-2085-L

**ORDER DENYING MOTION FOR
MODIFICATION OF TERM OF
IMPRISONMENT PURSUANT TO
18 U.S.C. § 3582(C)(2)**

On September 8, 2014, Petitioner Juan Jose Salazar-Torrijos (“Petitioner”), proceeding *pro se*, filed a motion for relief of sentence pursuant to 18 U.S.C. § 3582(c)(2). Petitioner’s motion is based upon retroactive Amendment 782 of the United States Sentencing Guidelines that pertain to drug trafficking offenses which became effective November 1, 2014. The Government filed an opposition to the motion. For the reasons set forth below, Petitioner’s motion is **DENIED**.

BACKGROUND

Petitioner pled guilty to Importation of Methamphetamine in violation of 21 U.S.C. §§ 952 and 960. On November 25, 2013, this Court sentenced Petitioner to 30 months for one count of Importation of Methamphetamine, finding that the base offense level was 36, which was reduced to 33 with a minor role reduction. A 3 point reduction was applied for acceptance of responsibility, along with a 2 point reduction for role, and a

1 minus 2 for Safety Valve, for an adjusted base offense level of 26. After a 4 point
2 reduction for Fast Track, the final calculation was 22, with a sentencing range of 41 to 51
3 months. After considering the factors in 18 U.S.C. § 3553(a), the Court sentenced
4 Petitioner to 30 months.

5 DISCUSSION

6 Petitioner now moves for a reduction of his sentence, pursuant to 18 U.S.C. §
7 3582(c)(2), based on Amendment 782 to the Sentencing Guidelines. Amendment 782
8 reduces the base offense level for drug trafficking offenses in § 2D1.1(c) of the
9 Sentencing Guidelines, by. *See* Amendment 782, Supplement to Appendix C,
10 Amendments to the Guidelines Manual. Petitioner falls within the purview of this
11 change.

12 A motion for reduction of sentence under § 3582(c)(2) “is simply a vehicle through
13 which appropriately sentenced prisoners can urge the court to exercise leniency to give
14 [them] the benefits of an amendment to the guidelines.” *United States v. Townsend*, 98
15 F.3d 510, 513 (9th Cir. 1996) (quoting *United States v. Whitebird*, 55 F.3d 1007, 1011
16 (5th Cir. 1995) (internal quotation marks omitted)). Whether to reduce a sentence under
17 § 3582(c)(2) is a discretionary decision. *See* 18 U.S.C. § 3582(c)(2) (“[T]he court *may*
18 reduce the term of imprisonment.”) (emphasis added); *Townsend*, 98 F.3d at 512 (“[T]he
19 decision whether to reduce a sentence under § 3582 is within the discretion of the district
20 court judge.”); *United States v. Cueto*, 9 F.3d 1438, 1440 (9th Cir. 1993) (“Courts have
21 discretion to reduce a previously imposed term of imprisonment when the Sentencing
22 Commission reduces the sentencing range, and the reduction is ‘consistent with
23 applicable policy statements issued by the Sentencing Commission.’ ”) (quoting 18
24 U.S.C. § 3582(c)(2)).

25 In determining whether a sentence should be modified following amendment of the
26 Guidelines, the Court should consider the term of imprisonment that it would have
27 imposed had the amendment to the Guidelines been in effect at the time the particular
28 defendant was sentenced. U.S.S.G. § 1B1.10(b). In addition, the Court must consider the

1 18 U.S.C. § 3553(a) factors¹ and the danger to the public created by any reduction in a
2 defendant's sentence. *Id.* at cmt. n. 1(B). The Court may also consider the defendant's
3 post-sentencing conduct. *Id.*

4 Applying the amended Guidelines, Petitioner's new base offense level would now
5 be a 34, rather than a 36, and his adjusted offense level would be 24. Petitioner remains
6 in a criminal history category I. Neither the Fast Track departure nor the variances are
7 calculated in the amended guidelines. Therefore, the resulting applicable guideline range
8 is 51 to 63 months.

9 Petitioner's offense in this case involved importation of methamphetamine
10 concealed within the rear seat of a Volkswagen Jetta crossing from Mexico into the
11 United States at the San Ysidro, California, West, Port of Entry. Petitioner played a
12 minor role in the charged conduct and appears to have been coerced to cross the drugs.
13 At the time of his sentencing, Petitioner was a 42 year old Mexican citizen, and had no
14 criminal history.

15 When the Court previously considered the §3553(a) factors at Petitioner's
16 sentencing, the Court believed that a below-Guideline sentence was appropriate. After
17 considering the §3553(a) factors anew, the danger to the public created by any reduction
18 in Petitioner's sentence, the Court finds no further reduction in Petitioner's sentence is
19 warranted. Petitioner's original 30 month sentence is still less than the low-end of the
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21
22 ¹ Section 3553(a) directs a court to consider the following factors in determining the particular sentence
23 to be imposed: "(1) the nature and circumstances of the offense and the history and characteristics of the
24 defendant; (2) the need for the sentence imposed: (A) to reflect the seriousness of the offense, to
25 promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate
26 deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D)
27 to provide the defendant with needed educational or vocational training, medical care, or other
28 correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of
sentence and the sentencing range established for: (A) the applicable category of offense committed by
the applicable category of defendant as set forth in the guidelines... (5) any pertinent policy statement...
(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have
been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the
offense." 18 U.S.C. § 3553(a).

1 new Guideline range. The Court considers the originally imposed sentence of 30 months
2 as the minimum necessary to address Petitioner's conduct, and thereby declines to reduce
3 his sentence further.

4 **CONCLUSION**

5 Based on all of the above considerations, Petitioner's motion for a reduction in his
6 sentence is **DENIED**.

7 **IT IS SO ORDERED.**

8
9 Dated: March 20, 2017

10 
11 Hon. M. James Lorenz
12 United States District Judge
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14 COPIES TO:

15 PETITIONER

16 U.S. ATTORNEY'S OFFICE
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